

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

JAMES E. POWELL,

Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

No. **C01-4093-PAZ**

**MEMORANDUM OPINION
AND ORDER**

This matter is again before the court following remand of the case for further proceedings pursuant to sentence six of 42 U.S.C. § 405(g). The plaintiff James E. Powell initially was found to be disabled as a child as of November 6, 1991. (*See* R. 259-61) Powell turned eighteen on August 3, 1998, warranting review of his claim. In addition, in June 1998, he applied for child's insurance benefits under Title II of the Social Security Act, as the disabled adult child of his mother. On December 15, 1998, the Commissioner issued a decision finding Powell no longer qualified for benefits. (*See* R. 284-87) The decision was affirmed upon reconsideration on July 19, 1999. (*See* R. 319-22) Powell requested a hearing, which was held before ALJ J. Michael Johnson on May 22, 2000. (R. 489-529) ALJ Johnson issued an unfavorable decision on July 26, 2000. (R. 533-48) The Appeals Council denied Powell's request for review on July 12, 2001 (R. 559-60), and Powell filed the instant action seeking this court's review.

On January 18, 2002, the court granted the Commissioner's motion for sentence six remand because the Commissioner stated the administrative record could not be located. (Doc. No. 7) Nearly one year later, the Commissioner filed another motion for

sentence six remand (Doc. No. 8), which the court denied as moot (Doc. No. 10) because the prior remand order was still in effect.

On April 19, 2003, the Appeals Council remanded the case to an ALJ for further proceedings. The Appeals Council directed the ALJ to address medical opinions expressed by Richard T. Satterfield, M.D. and Jim Snowden, Ph.D. regarding Powell's ability to perform work-related functions; to evaluate Powell's mother's opinion evidence; to reconsider whether Powell had any past relevant work activity; and to further develop the record as necessary to make a full and fair consideration of Powell's case. (R. 563-65) A supplemental hearing was held on November 14, 2003, before ALJ Jean M. Ingrassia. (R. 578-600) Attorney John S. Moeller represented Powell at the hearing. Powell testified at the hearing, as did Vocational Expert ("VE") Jeff L. Johnson. (*See id.*) On January 21, 2004, ALJ Ingrassia issued an unfavorable decision, finding Powell was not entitled to child's insurance benefits as a disabled adult child. (R. 473-83) On September 16, 2004, the Commissioner filed an Answer to Powell's Complaint, along with the administrative record. (Doc. No. 11 & Record) Powell filed a brief supporting his claim on October 18, 2004 (Doc. No. 13). The Commissioner filed a responsive brief on December 16, 2004 (Doc. No. 14).

The court finds the case has now been fully submitted, and turns to a review of the ALJ's decision. In his brief, Powell specifically takes issue with the ALJ's treatment of the opinions of Drs. Snowden and Satterfield. (*See* Doc. No. 13, pp. 5-7) Powell argues the ALJ should have obtained a consultative examination to determine Powell's work-related abilities. (*Id.*) He claims the ALJ failed to comply with the Appeals Council's directions to further develop the record, and he seeks either reversal or another remand for further development of the record.

The court reviews an ALJ's decision to determine whether the ALJ applied the correct legal standards, and whether the factual findings are supported by substantial evidence on the record as a whole. *Hensley v. Barnhart*, 352 F.3d 353, 355 (8th Cir. 2003); *Banks v. Massanari*, 258 F.3d 820, 823 (8th Cir. 2001) (citing *Lowe v. Apfel*, 226 F.3d 969, 971 (8th Cir. 2000)); *Berger v. Apfel*, 200 F.3d 1157, 1161 (8th Cir. 2000) (citing 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971)). This review is deferential; the court must affirm the ALJ's factual findings if they are supported by substantial evidence on the record as a whole. *Id.* (citing *Estes v. Barnhart*, 275 F.3d 722, 724 (8th Cir. 2002); *Krogmeier v. Barnhart*, 294 F.3d 1019, 1022 (8th Cir. 2002) (citing *Prosch v. Apfel*, 201 F.3d 1010, 1012 (8th Cir. 2000)); *Kelley v. Callahan*, 133 F.3d 583, 587 (8th Cir. 1998) (citing *Matthews v. Bowen*, 879 F.2d 422, 423-24 (8th Cir. 1989)); 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive. . . ."). Under this standard, "[s]ubstantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion." *Krogmeier, id.*; *Weiler v. Apfel*, 179 F.3d 1107, 1109 (8th Cir. 1999) (citing *Pierce v. Apfel*, 173 F.3d 704, 706 (8th Cir. 1999)); accord *Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citing *Craig v. Apfel*, 212 F.3d 433, 436 (8th Cir. 2000)); *Hutton v. Apfel*, 175 F.3d 651, 654 (8th Cir. 1999); *Woolf v. Shalala*, 3 F.3d 1210, 1213 (8th Cir. 1993).

Moreover, substantial evidence "on the record as a whole" requires consideration of the record in its entirety, taking into account both "evidence that detracts from the Commissioner's decision as well as evidence that supports it." *Krogmeier*, 294 F.3d at 1022 (citing *Craig*, 212 F.3d at 436); *Willcuts v. Apfel*, 143 F.3d 1134, 1136 (8th Cir. 1998) (quoting *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488, 71 S. Ct. 456,

464, 95 L. Ed. 456 (1951)); *Gowell*, 242 F.3d at 796; *Hutton*, 175 F.3d at 654 (citing *Woolf*, 3 F.3d at 1213); *Kelley*, 133 F.3d at 587 (citing *Cline v. Sullivan*, 939 F.2d 560, 564 (8th Cir. 1991)). The court must “search the record for evidence contradicting the [Commissioner’s] decision and give that evidence appropriate weight when determining whether the overall evidence in support is substantial.” *Baldwin v. Barnhart*, 349 F.3d 549, 555 (8th Cir. 2003) (also citing *Cline*, *supra*).

In evaluating the evidence in an appeal of a denial of benefits, the court must apply a balancing test to assess any contradictory evidence. *Sobania v. Secretary of Health & Human Serv.*, 879 F.2d 441, 444 (8th Cir. 1989) (citing *Steadman v. S.E.C.*, 450 U.S. 91, 99, 101 S. Ct. 999, 1006, 67 L. Ed. 2d 69 (1981)). The court, however, does not “reweigh the evidence presented to the ALJ,” *Baldwin*, 349 F.3d at 555 (citing *Bates v. Chater*, 54 F.3d 529, 532 (8th Cir. 1995)), or “review the factual record *de novo*.” *Roe v. Chater*, 92 F.3d 672, 675 (8th Cir. 1996) (citing *Naber v. Shalala*, 22 F.3d 186, 188 (8th Cir. 1994)). Instead, if, after reviewing the evidence, the court finds it “possible to draw two inconsistent positions from the evidence and one of those positions represents the agency’s findings, [the court] must affirm the [Commissioner’s] decision.” *Id.* (quoting *Robinson v. Sullivan*, 956 F.2d 836, 838 (8th Cir. 1992), and citing *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989)); accord *Baldwin*, 349 F.3d at 555; *Young v. Apfel*, 221 F.3d 1065, 1068 (8th Cir. 2000). This is true even in cases where the court “might have weighed the evidence differently.” *Culbertson v. Shalala*, 30 F.3d 934, 939 (8th Cir. 1994) (citing *Browning v. Sullivan*, 958 F.2d 817, 822 (8th Cir. 1992)); accord *Krogmeier*, 294 F.3d at 1022 (citing *Woolf*, 3 F.3d at 1213). The court may not reverse the Commissioner’s decision “merely because substantial evidence would have supported an opposite decision.” *Baldwin*, 349 F.3d at 555 (citing *Grebenick v. Chater*, 121 F.3d

1193, 1198 (8th Cir. 1997)); *Young*, 221 F.3d at 1068; *see Pearsall*, 274 F.3d at 1217; *Gowell*, 242 F.3d at 796; *Spradling v. Chater*, 126 F.3d 1072, 1074 (8th Cir. 1997).

In the present case, the record indicates Powell completed twelve years of school. In 1986, he was diagnosed with attention deficit hyperactivity disorder (“ADHD”). In 1990, he was certified as learning disabled, and he was accommodated in learning disability programs throughout the remainder of his schooling. An evaluation in November 1992, when he was twelve years old, indicated Powell was still considered to be learning disabled in the areas of reading and the written language. He was noted to be of average intellect with a composite IQ score of 93. He had average gross motor skills, but below average fine motor skills. He was noted to be aggressive and “extremely active with medication,” and the evaluator opined Powell possibly could be suffering from long-term depression. He exhibited difficulty staying on task, and he was both distracted by and distracting to other students. His ADHD was being treated with Ritalin.

Powell was treated by Dr. Satterfield, and by therapist Gary Lewis in the doctor’s office, from September 1993 until July 1996. Powell exhibited problems with concentration, attention, and pace during those years, despite his treatment with medications. However, he was able to progress in school, and he responded well within a structured environment. The ALJ found Dr. Satterfield’s records indicated Powell could “respond to and function in the structured setting that one would find in simple, routine, repetitive, unskilled work and in low-level semi-skilled work.” (R. 480) The court finds Dr. Satterfield’s records do not support the ALJ’s conclusion about Powell’s ability to work. However, because all of Dr. Satterfield’s records predate Powell’s eighteenth birthday by at least two years, and because the period at issue here post-dates his eighteenth birthday (see R. 477), the court further finds Dr. Satterfield’s treatment of

Powell is not entitled to much weight in evaluating Powell's claims for benefits. There is more recent evidence of record that is much more probative concerning Powell's condition.

In August 1998, around the time Powell turned eighteen, his English teacher completed an evaluation form giving the teacher's impressions of Powell's condition at that time. The teacher noted he had taught Powell for two or three periods per day for two years. He stated Powell's behavior had worsened over the previous year, with more student-to-student conflicts, and exhibitions of anger and criticism of others. The teacher noted Powell was taught in "mainstream" classrooms for three to four periods daily, and spent the rest of the day in a "moderate behavior disorder classroom." (R. 340) He observed that Powell had an attention span of five to ten minutes, lessening as the day went by. Powell did not do well in group situations, preferring to work independently. He had good attendance and usually finished his work, but he did not adjust well to changes of routine in the classroom environment. Powell had difficulties in non-structured areas, such as during lunch and in the hallways.

Another of Powell's teachers completed an evaluation of Powell on February 18, 1999. The teacher had seen Powell for two periods per day for six years. He noted no changes in Powell's behavior. He stated Powell had to be told to begin his assignments, but once he got started, Powell could work independently. He indicated Powell took longer to complete assignments than others, and he tended to be careless if he got in a hurry. Powell exhibited problems getting along with others, and he frequently engaged in name-calling and swearing.

These evaluations by Powell's teachers indicate Powell had the ability to work independently, and to finish tasks he started if given adequate time. He tended to have

difficulties interacting with other students. He had acceptable motor skills, however, and he appeared to respond well to structure.

Regarding Powell's work history, the record indicates Powell worked for about two months at a Hardee's restaurant, from December 1998 through January 1999. He worked at a number of short-term jobs from 2000 through 2002. It appears the only year in which his work rose to the level of substantial gainful activity was 2002, when he earned \$8,903.05. (R. 572; see R. 477-78) He was not engaged in substantial gainful activity when he turned eighteen, or during the following twelve months, and the ALJ so found. (R. 478) The ALJ noted that in 2002, Powell lost his job at an animal control facility because he violated one of his employer's rules, not because of Powell's mental impairments. The ALJ found Powell engaged in substantial gainful activity in 2002. *Id.* The court finds these conclusions regarding Powell's work history were appropriate and supported by substantial evidence in the record.

Powell was evaluated by Dr. Snowden in September 1998. Testing revealed Powell had a full-scale IQ score of 79, indicating he was in the borderline mentally deficient range of intellectual functioning. (R. 446) Powell exhibited significant weakness in the ability to understand verbal abstractions, but areas of strength for him included visual and spatial integration skills. Dr. Snowden opined Powell likely would have "significant deficits in his ability to learn compared to his age peers." (R. 447) He opined Powell likely would have "problems dealing with even minimally abstract concepts," and likely would have difficulty getting and maintaining employment, although he could be a candidate for appropriate job training if his strengths were emphasized. Dr. Snowden also indicated Powell could have problems with common sense judgment, but he should be able to handle his own funds. (R. 448)

The ALJ found Dr. Snowden's report indicated Powell "does well when he adheres to his prescribed medical regimen and is provided with structure." (R. 480) She also found the doctor's report supported the conclusion that although Powell would have difficulty finding work, "he should still be capable of simple, routine, repetitive, unskilled work as well as low-level, semi-skilled work as such jobs can be learned rather quickly, do not require the ability to deal with abstract concepts and are often performed in a somewhat structured setting." (*Id.*) The court is at a loss to determine how the ALJ reached these conclusions from Dr. Snowden's report. Dr. Snowden indicated Powell's cognitive abilities suggested "significant deficits," and he expressed reservations about Powell's ability to find and maintain work. The doctor made no statements whatsoever about Powell's ability to "do[] well when he adheres to his prescribed medical regimen and is provided with structure," as found by the ALJ. However, despite the fact that Dr. Snowden's report does not support the ALJ's conclusions, additional medical evidence in the record does provide such support.

Powell received mental health treatment from Philip J. Muller, D.O. from at least August 1998 through February 2000. (See R. 464-70) Powell reported he was doing well in school and was having no untoward side effects from his Ritalin and Hydroxyzine. He was not experiencing hyperactivity, and he was sleeping well at night. He appeared for his appointments reasonably well groomed, and things were going well for him both at school and at home. In April 1999, Powell reported some mild difficulties with concentration, noting he occasionally would turn on the bath water and forget to turn it off, or he might leave something cooking on the stove. Dr. Muller did not make any changes to Powell's medications, but noted Powell needed to make some behavioral changes to cope with his concentration deficits. For example, he noted Powell should not

try to do too many tasks at one time. The doctor noted Powell might be a candidate for antidepressant medication at some point in the future.

In October 1999, Powell's mother called Dr. Muller to report that Powell had quit taking his medications about a month earlier because they made him drowsy. She stated Powell had been in a car accident since he quit taking his medications, and he had been exhibiting anger and out-of-control behavior at home. He had begun having problems in school, as well. At Powell's next appointment in December 1999, Dr. Muller switched Powell's medication to Adderall. He stressed to Powell the importance of taking his medications as directed. Powell did well on the Adderall, having fewer problems at home and doing better in school. He continued to do well on the Adderall through February 2000, which is the last record entry from Dr. Muller.

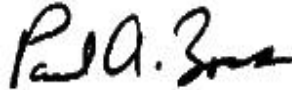
Dr. Muller's records support the ALJ's conclusion that Powell does well when he adheres to his medication regimen and works within a structure.

In the ALJ's opinion following remand, the ALJ limited her discussion to those specific areas identified by the Appeals Council for further consideration. (See R. 480) ALJ Ingrassia did not repeat the analysis of Dr. Muller's records or other record evidence from the first ALJ opinion. (*Id.*) Powell complains that ALJ Ingrassia failed to follow the directions of the Appeals Council, arguing a consultative examination should have been obtained by the ALJ. The court finds no consultative examination was required. The ALJ addressed those areas raised by the Appeals Council, and properly concluded Powell would be capable of simple, routine, repetitive work of a fairly simple nature. ALJ Ingrassia's decision is supported by substantial evidence and is, therefore, affirmed.

Accordingly, for the reasons discussed above, the Commissioner's decision is **affirmed**, and judgment will be entered in favor of the Commissioner and against Powell.

IT IS SO ORDERED.

DATED this 26th day of April, 2005.

A handwritten signature in black ink, appearing to read "Paul A. Zoss", is written over a horizontal line.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT